

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
GEORGE J. SNOOK }

Appearances:

For Appellant: W. A. Zimmerman

For Respondent: W.M. Walsh, Assistant Franchise Tax Com-
missioner; Harrison Harkins, Associate
Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of George J. Snook to a proposed assessment of additional tax in the amount of \$150.21 for the year ended December 31, 1935.

The proposed assessment resulted from the disallowance by the Commissioner of a deduction for bad debts in the amount of \$7000, the indebtedness being represented by two notes of one L. Lindsay, dated April 24 and June 30, 1930, respectively, and alleged to have been ascertained to be worthless and charged off in the taxable year ended December 31, 1935. The deduction was disallowed by the Commissioner on the ground that a reasonable and prudent man would have regarded the obligations as becoming worthless in 1934, when the enforcement thereof became barred by the statute of limitations.

Following the death of the debtor in September, 1931, the Appellant was assured by the widow, who was administratrix, and her representative, a son-in-law of the deceased debtor, that a claim for the obligation would be filed and the notes scheduled in the probate proceedings. After expiration of the period allowed for filing claims, Appellant was told that the claims had not been scheduled, since there was not enough assets in the estate to pay the notes, but that the widow would pay the notes after the estate was closed.

Because of Appellant's close acquaintanceship with the deceased debtor, the widow, and her representative, and because of his knowledge of large holdings of the deceased debtor in a copper mining company and other ventures in which the deceased debtor and Appellant were mutually interested, it is contended

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by Appellant that he exercised a reasonable judgment in believing the debt would eventually be paid. In August, 1935, a formal request for payment was made, and all legal liability on the notes or the subsequent promises to pay was denied. Appellant then charged off the obligations as worthless.

Section 8(f) authorizes the deduction of "Debts ascertained to be worthless and charged off within the taxable year" Under this provision a debt may in fact be worthless, but if this is not ascertained by the creditor until a later date, the latter may take the deduction in the taxable year in which he ascertained the debt to be worthless, provided that he acted reasonably in continuing to regard the obligation as possessing value. Commissioner v. Burdette, 69 F. (2d) 410; Sabath v. Commissioner, 100 F. (2d) 569; see also San Joaquin Brick Co. v. Commissioner (C. C. A. 9th, Aug. 8, 1942) ____ F. (2d) ____.

The availability of the statute of limitations as a defense to an action on an obligation does not under all circumstances require the conclusion that the obligation is worthless. Commissioner v. Burdette, *supra*; Leo Stein, 4 B. T. A. 1016; Warren L. Colvert, 6 B. T. A. 623; Alfred K. Nippert, et al, 32 B. T. A. 892. In the situation here presented we are of the opinion that in view of Appellant's long association with the administratrix and her representative, of the assurances which they gave him and of their ability to pay the amount in question, he had ample justification for believing up to August, 1935, that the notes would be paid, notwithstanding the fact that they were legally unenforceable.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Charles J. McColgan, Franchise Tax Commissioner, in overruling the protest of George J. Snook to a proposed assessment of additional tax in the amount of \$150.21 for the year ended December 31, 1935, be and the same is hereby reversed. Said ruling is hereby set aside and the Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 3rd day of September, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary